

SENATE BILL 559

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2lr1148
CF HB 529

By: **Senators Waldstreicher, Smith, Lee, Hettleman, Zucker, and Guzzone**

Introduced and read first time: January 31, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 22, 2022

CHAPTER _____

1 AN ACT concerning

2 **Estates and Trusts – Supported Decision Making**

3 FOR the purpose of authorizing the use of supported decision making to assist an adult
4 through the provision of support for the adult in making, communicating, or
5 effectuating decisions and preventing the need for the appointment of certain
6 substitute decision makers for the adult; ~~authorizing~~ recognizing the right of an
7 adult to enter into a supported decision–making agreement with one or more
8 supporters under certain circumstances; providing immunity from civil or criminal
9 liability under certain circumstances; and generally relating to supported decision
10 making for adults.

11 BY adding to

12 Article – Estates and Trusts

13 Section 18–101 through 18–109 to be under the new title “Title 18. Supported
14 Decision Making”

15 Annotated Code of Maryland

16 (2017 Replacement Volume and 2021 Supplement)

17 BY repealing and reenacting, without amendments,

18 Article – Health – General

19 Section 5–601(a)

20 Annotated Code of Maryland

21 (2019 Replacement Volume and 2021 Supplement)

22 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Health – General
2 Section 5–601(o)
3 Annotated Code of Maryland
4 (2019 Replacement Volume and 2021 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
6 That the Laws of Maryland read as follows:

7 **Article – Estates and Trusts**

8 **TITLE 18. SUPPORTED DECISION MAKING.**

9 **18–101.**

10 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) “SUPPORTED DECISION MAKING” MEANS A PROCESS BY WHICH AN
13 ADULT, WITH OR WITHOUT HAVING ENTERED A SUPPORTED DECISION–MAKING
14 AGREEMENT, UTILIZES SUPPORT FROM A SERIES OF RELATIONSHIPS IN ORDER TO
15 MAKE, COMMUNICATE, OR EFFECTUATE THE ADULT’S OWN LIFE DECISIONS.

16 (C) “SUPPORTED DECISION–MAKING AGREEMENT” MEANS AN
17 ARRANGEMENT BETWEEN AN ADULT AND A SUPPORTER OR SUPPORTERS THAT
18 DESCRIBES:

19 (1) HOW THE ADULT USES SUPPORTED DECISION MAKING TO MAKE
20 DECISIONS;

21 (2) THE RIGHTS OF THE ADULT; AND

22 (3) THE RESPONSIBILITIES OF THE SUPPORTER OR SUPPORTERS.

23 (D) “SUPPORTER” MEANS AN INDIVIDUAL SELECTED BY AN ADULT TO
24 PROVIDE SUPPORT IN MAKING, COMMUNICATING, OR EFFECTUATING THE ADULT’S
25 OWN LIFE DECISIONS.

26 **18–102.**

27 (A) THE PURPOSE OF THIS TITLE IS TO ASSIST ADULTS BY:

28 (1) OBTAINING SUPPORT FOR THE ADULT IN MAKING,
29 COMMUNICATING, OR EFFECTUATING DECISIONS THAT CORRESPOND TO THE WILL,
30 PREFERENCES, AND CHOICES OF THE ADULT; AND

1 **(2) PREVENTING THE NEED FOR THE APPOINTMENT OF A**
2 **SUBSTITUTE DECISION MAKER FOR THE ADULT, INCLUDING A GUARDIAN OF THE**
3 **PERSON OR PROPERTY.**

4 **(B) THIS TITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO**
5 **PROMOTE ITS UNDERLYING PURPOSES AND POLICIES.**

6 **18-103.**

7 **(A) AN ADULT MAY UTILIZE SUPPORTED DECISION MAKING TO:**

8 **(1) INCREASE THE ADULT'S SELF-DETERMINATION;**

9 **(2) PREVENT THE NEED FOR THE APPOINTMENT OF A SUBSTITUTE**
10 **DECISION MAKER; OR**

11 **(3) LIMIT OR TERMINATE THE USE OF A SUBSTITUTE**
12 **DECISION MAKER.**

13 **(B) ALL ADULTS ARE PRESUMED CAPABLE OF MAKING A SUPPORTED**
14 **DECISION-MAKING AGREEMENT.**

15 **(C) THE MANNER IN WHICH AN ADULT COMMUNICATES WITH OTHERS IS**
16 **NOT GROUNDS FOR DETERMINING THAT THE ADULT IS INCAPABLE OF MAKING,**
17 **CHANGING, OR REVOKING A SUPPORTED DECISION-MAKING AGREEMENT.**

18 **(D) EXECUTION OF A SUPPORTED DECISION-MAKING AGREEMENT BY AN**
19 **ADULT MAY NOT:**

20 **(1) BE USED AS EVIDENCE OF INCAPACITY; OR**

21 **(2) PRECLUDE THE ABILITY OF THE ADULT TO:**

22 **(I) ACT INDEPENDENTLY OF A SUPPORTED DECISION-MAKING**
23 **AGREEMENT; OR**

24 **(II) ACCESS THE ADULT'S PERSONAL INFORMATION WITHOUT A**
25 **SUPPORTER.**

26 **18-104.**

27 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN ADULT**
28 **MAY VOLUNTARILY, WITHOUT UNDUE INFLUENCE OR COERCION, ENTER INTO A**
29 **SUPPORTED DECISION-MAKING AGREEMENT WITH A SUPPORTER OR SUPPORTERS.**

1 **(B) (1) (I) IF A PERSON UNDER GUARDIANSHIP ENTERS INTO A**
 2 **SUPPORTED DECISION-MAKING AGREEMENT UNDER THIS TITLE, THE AGREEMENT**
 3 **DOES NOT SUPPLANT THE AUTHORITY OF A GUARDIAN OF THE ADULT, UNLESS THE**
 4 **COURT AUTHORIZES THE LIMITATION OR REMOVAL OF GUARDIANSHIP DUE TO THE**
 5 **EXISTENCE OF A SUPPORTED DECISION-MAKING AGREEMENT.**

6 ~~(2)~~ **(II) A GUARDIAN MAY NOT PREVENT AN ADULT FROM ENTERING**
 7 **INTO A VALID SUPPORTED DECISION-MAKING AGREEMENT THAT DOES NOT**
 8 **SUPPLANT THE AUTHORITY OF THE GUARDIAN WITHOUT GOOD CAUSE.**

9 **(2) A SUPPORTED DECISION-MAKING AGREEMENT OR ANY**
 10 **PROVISION OF THE AGREEMENT DOES NOT:**

11 **(I) SUPPLANT THE AUTHORITY OF AN AGENT UNDER A POWER**
 12 **OF ATTORNEY EXECUTED IN ACCORDANCE WITH TITLE 17 OF THIS ARTICLE OR AN**
 13 **ADVANCE DIRECTIVE EXECUTED IN ACCORDANCE WITH TITLE 5, SUBTITLE 6 OF THE**
 14 **HEALTH – GENERAL ARTICLE; OR**

15 **(II) SUPPLANT OR GRANT AUTHORITY OR AGENCY POWERS**
 16 **CONTEMPLATED BY A POWER OF ATTORNEY OR AN ADVANCE DIRECTIVE.**

17 **(C) IF AN ADULT VOLUNTARILY ENTERS INTO A SUPPORTED**
 18 **DECISION-MAKING AGREEMENT WITH ONE OR MORE SUPPORTERS, THE ADULT MAY**
 19 **AUTHORIZE A SUPPORTER TO PROVIDE SUPPORT TO THE ADULT IN MAKING**
 20 **DECISIONS IN AREAS OF THE ADULT’S CHOOSING, INCLUDING:**

21 **(1) GATHERING INFORMATION;**

22 **(2) UNDERSTANDING AND INTERPRETING INFORMATION;**

23 **(3) WEIGHING OPTIONS AND ALTERNATIVES TO A DECISION;**

24 **(4) UNDERSTANDING THE CONSEQUENCES OF MAKING OR NOT**
 25 **MAKING A DECISION;**

26 **(5) PARTICIPATING IN CONVERSATIONS WITH THIRD PARTIES WITH**
 27 **THE ADULT’S EXPLICIT AUTHORIZATION; AND**

28 **(6) PROVIDING THE ADULT WITH SUPPORT AND ADVOCACY IN**
 29 **IMPLEMENTING A DECISION.**

30 **(D) NOTHING IN THIS TITLE OR THE EXISTENCE OF A SUPPORTED**
 31 **DECISION-MAKING AGREEMENT MAY PRECLUDE THE ADULT FROM ACTING**
 32 **INDEPENDENTLY OF A SUPPORTED DECISION-MAKING AGREEMENT.**

1 **(E) THE AVAILABILITY OF A SUPPORTED DECISION-MAKING AGREEMENT IS**
2 **NOT INTENDED TO LIMIT THE INFORMAL USE OF SUPPORTED DECISION MAKING OR**
3 **TO PRECLUDE JUDICIAL CONSIDERATION OF INFORMAL SUPPORTED**
4 **DECISION-MAKING ARRANGEMENTS AS A LESS RESTRICTIVE ALTERNATIVE TO**
5 **GUARDIANSHIP.**

6 **(F) EXECUTION OF A SUPPORTED DECISION-MAKING AGREEMENT MAY NOT**
7 **BE A CONDITION OF PARTICIPATING IN ANY ACTIVITY, SERVICE, OR PROGRAM.**

8 **18-105.**

9 **(A) A SUPPORTER SHALL:**

10 **(1) SUPPORT THE WILL AND PREFERENCE OF THE ADULT AND NOT**
11 **THE SUPPORTER'S OPINION OF THE REASONABLENESS OF THE ADULT'S WISHES,**
12 **PREFERENCES, OR CHOICES;**

13 **(2) ACT HONESTLY, DILIGENTLY, AND IN GOOD FAITH;**

14 **(3) ACT WITHIN THE AUTHORITY GIVEN IN THE SUPPORTED**
15 **DECISION-MAKING AGREEMENT;**

16 **(4) AVOID CONFLICTS OF INTEREST;**

17 **(5) MAINTAIN RECORDS, WHICH THE SUPPORTER SHALL MAKE**
18 **AVAILABLE TO THE ADULT ON REQUEST, CONCERNING:**

19 **(I) THE SUPPORTER'S ACTIONS UNDER THE SUPPORTED**
20 **DECISION-MAKING AGREEMENT; AND**

21 **(II) HOW THE ADULT COMMUNICATES AND EXPRESSES**
22 **OPINIONS TO THE SUPPORTER; ~~AND~~**

23 **(6) KEEP ANY RECORDS AND INFORMATION OBTAINED UNDER A**
24 **SUPPORTED DECISION-MAKING AGREEMENT:**

25 **(I) SUBJECT TO THE LIMITATIONS UNDER TITLE 9, SUBTITLE 1**
26 **OF THE COURTS ARTICLE, CONFIDENTIAL AND PRIVILEGED; AND**

27 **(II) SECURE FROM UNAUTHORIZED ACCESS, USE, OR**
28 **DISCLOSURE; AND**

1 **(7) (i) DELIVER A COPY OF THE SUPPORTED DECISION-MAKING**
 2 **AGREEMENT TO ANY DULY APPOINTED GUARDIAN OF THE PERSON OR PROPERTY OF**
 3 **THE ADULT; AND**

4 **(ii) 1. MAKE A GOOD FAITH EFFORT TO DETERMINE IF THE**
 5 **ADULT HAS A FULLY EXECUTED POWER OF ATTORNEY, ADVANCE DIRECTIVE, OR**
 6 **REVOCABLE TRUST AGREEMENT; AND**

7 **2. UNLESS THE ADULT EXPRESSLY OBJECTS, DELIVER A**
 8 **COPY OF THE SUPPORTED DECISION-MAKING AGREEMENT TO ANY AGENT**
 9 **DESIGNATED UNDER A POWER OF ATTORNEY OR AN ADVANCE DIRECTIVE OR ANY**
 10 **TRUSTEE UNDER A REVOCABLE TRUST AGREEMENT.**

11 **(B) THE RELATIONSHIP BETWEEN THE ADULT AND THE SUPPORTER SHALL**
 12 **BE ONE OF TRUST AND CONFIDENCE THAT PRESERVES THE DECISION-MAKING**
 13 **AUTHORITY OF THE ADULT.**

14 **(C) A SUPPORTER MAY NOT:**

15 **(1) MAKE DECISIONS ON BEHALF OF THE ADULT;**

16 **(2) EXERT UNDUE INFLUENCE ON THE ADULT;**

17 **(3) COERCE THE ADULT;**

18 **(4) OBTAIN INFORMATION ABOUT THE ADULT WITHOUT THE ADULT'S**
 19 **CONSENT;**

20 **(5) ENFORCE DECISIONS MADE BY THE ADULT ~~WITHOUT THE ADULT~~**
 21 **~~BEING PRESENT, UNLESS THE ADULT EXPLICITLY AUTHORIZES THE SUPPORTER TO~~**
 22 **~~ENFORCE THE DECISION; OR~~**

23 **(6) ACT OUTSIDE OF THE AUTHORITY GRANTED IN THE SUPPORTED**
 24 **DECISION-MAKING AGREEMENT.**

25 **18-106.**

26 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**
 27 **SUPPORTER MAY BE ANY PERSON CHOSEN BY THE ADULT.**

28 **(B) THE FOLLOWING INDIVIDUALS ARE DISQUALIFIED FROM ACTING AS A**
 29 **SUPPORTER:**

30 **(1) A MINOR;**

1 (2) AN INDIVIDUAL AGAINST WHOM THE ADULT HAS OBTAINED A
2 PEACE ORDER OR A PROTECTIVE ORDER;

3 (3) AN INDIVIDUAL WHO HAS BEEN CONVICTED OF FINANCIAL
4 EXPLOITATION UNDER TITLE 13, SUBTITLE 6 OF THIS ARTICLE; AND

5 (4) AN INDIVIDUAL WHO IS THE SUBJECT OF A CIVIL OR CRIMINAL
6 ORDER PROHIBITING CONTACT WITH THE ADULT.

7 (C) A SUPPORTER MAY RESIGN AS A SUPPORTER BY WRITTEN OR ORAL
8 NOTICE TO THE ADULT, ANY REMAINING SUPPORTERS OF THE ADULT NAMED IN THE
9 AGREEMENT, AND ANY THIRD PARTIES WHO HAVE THE AGREEMENT ON FILE.

10 (D) IF A SUPPORTER RESIGNS, DIES, BECOMES INCAPABLE, OR BECOMES
11 FOR ANY OTHER REASON UNABLE TO ACT AS A SUPPORTER AND THERE IS NO
12 ALTERNATE SUPPORTER, THE AUTHORITY GIVEN TO THE SUPPORTER IS
13 SUSPENDED.

14 18-107.

15 (A) A SUPPORTED DECISION-MAKING AGREEMENT MAY BE IN ANY FORM
16 CONSISTENT WITH THE REQUIREMENTS UNDER THIS SECTION.

17 (B) A SUPPORTED DECISION-MAKING AGREEMENT SHALL:

18 (1) BE DOCUMENTED IN WRITING;

19 (2) BE DATED;

20 (3) NAME AT LEAST ONE SUPPORTER;

21 (4) DESCRIBE THE DECISION-MAKING ASSISTANCE THAT EACH
22 SUPPORTER MAY PROVIDE THE ADULT;

23 (5) DESCRIBE HOW THE SUPPORTERS MAY WORK TOGETHER IF
24 THERE IS MORE THAN ONE SUPPORTER;

25 (6) DESCRIBE HOW ANY PERCEIVED OR ACTUAL CONFLICT OF
26 INTEREST BETWEEN THE SUPPORTER OR SUPPORTERS AND THE ADULT SHALL BE
27 MITIGATED;

28 (7) DOCUMENT HOW THE ADULT SELECTED THE SUPPORTER OR
29 SUPPORTERS;

1 **(8) BE APPROVED BY THE COURT IF THE ADULT HAS BEEN**
 2 **APPOINTED A GUARDIAN OF THE PERSON OR PROPERTY AND THE SUPPORTED**
 3 **DECISION-MAKING AGREEMENT AFFECTS THE AUTHORITY OF THE GUARDIAN;**

4 **(9) STATE THAT:**

5 **(I) THE SUPPORTER OR SUPPORTERS MAY NOT MAKE**
 6 **DECISIONS OR EFFECTUATE TRANSACTIONS FOR THE ADULT; AND**

7 **(II) THE SUPPORTED DECISION-MAKING AGREEMENT OR ANY**
 8 **PROVISION OF THE AGREEMENT DOES NOT:**

9 **1. AUTHORIZE THE SUPPORTER OR SUPPORTERS TO**
 10 **ACT ON BEHALF OF THE ADULT;**

11 **2. SUPPLANT THE AUTHORITY OF AN AGENT UNDER A**
 12 **POWER OF ATTORNEY EXECUTED IN ACCORDANCE WITH TITLE 17 OF THIS ARTICLE**
 13 **OR AN ADVANCE DIRECTIVE EXECUTED IN ACCORDANCE WITH TITLE 5, SUBTITLE 6**
 14 **OF THE HEALTH - GENERAL ARTICLE; OR**

15 **3. SUPPLANT OR GRANT AUTHORITY OR AGENCY**
 16 **POWERS CONTEMPLATED BY A POWER OF ATTORNEY OR AN ADVANCE DIRECTIVE;**

17 **~~(9)~~ (10) CONTAIN AN ATTESTATION THAT THE SUPPORTER OR**
 18 **SUPPORTERS AGREE TO HONOR THE RIGHT OF THE ADULT TO MAKE DECISIONS AND**
 19 **THAT THE SUPPORTER OR SUPPORTERS WILL NOT MAKE DECISIONS FOR THE**
 20 **ADULT; ~~AND~~**

21 **~~(10)~~ (11) BE SIGNED BY THE ADULT AND THE SUPPORTER OR**
 22 **SUPPORTERS, WITH EACH SIGNATURE WITNESSED BY TWO ADULTS WHO ARE NOT:**

23 **(I) A SUPPORTER FOR THE ADULT; OR**

24 **(II) AN EMPLOYEE OR AGENT OF A SUPPORTER NAMED IN THE**
 25 **SUPPORTED DECISION-MAKING AGREEMENT; AND**

26 **(12) IF THE ADULT HAS A FULLY EXECUTED POWER OF ATTORNEY,**
 27 **ADVANCE DIRECTIVE, OR REVOCABLE TRUST AGREEMENT AND THE ADULT DOES**
 28 **NOT EXPRESSLY OBJECT, DELIVER A COPY OF THE SUPPORTED DECISION-MAKING**
 29 **AGREEMENT TO THE AGENT DESIGNATED UNDER THE POWER OF ATTORNEY OR**
 30 **ADVANCE DIRECTIVE OR ANY TRUSTEE UNDER THE REVOCABLE TRUST**
 31 **AGREEMENT.**

32 **(C) A SUPPORTED DECISION-MAKING AGREEMENT MAY:**

1 (1) APPOINT MORE THAN ONE SUPPORTER; AND

2 (2) APPOINT AN ALTERNATE TO ACT IN THE PLACE OF A SUPPORTER
3 IN CIRCUMSTANCES SPECIFIED IN THE AGREEMENT.

4 18-108.

5 AN ADULT UTILIZING A SUPPORTED DECISION-MAKING AGREEMENT MAY:

6 (1) REVOKE THE SUPPORTED DECISION-MAKING AGREEMENT AT
7 ANY TIME ORALLY, IN WRITING, OR OTHERWISE BY EXPRESSING THE ADULT'S
8 SPECIFIC INTENT TO REVOKE THE AGREEMENT; AND

9 (2) RECEIVE ANY SUPPORT NEEDED FROM AN INDIVIDUAL OF THE
10 ADULT'S CHOOSING TO REVOKE THE AGREEMENT.

11 18-109.

12 (A) ~~A THIRD PARTY WHO IN GOOD FAITH ACTS IN RELIANCE ON THE~~
13 ~~DECISIONS MADE BY AN ADULT UTILIZING A SUPPORTED DECISION MAKING~~
14 ~~AGREEMENT OR WHO IN GOOD FAITH DECLINES TO HONOR A SUPPORTED~~
15 ~~DECISION-MAKING AGREEMENT~~ IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY
16 OR DISCIPLINE FOR UNPROFESSIONAL CONDUCT FOR:

17 (1) ~~COMPLYING~~ IF THE THIRD PARTY ACTED IN GOOD FAITH
18 RELIANCE ON A DECISION MADE BY AN ADULT UTILIZING A SUPPORTED
19 DECISION-MAKING AGREEMENT, COMPLYING WITH AN ADULT'S DECISION IN
20 ACCORDANCE WITH A SUPPORTED DECISION-MAKING AGREEMENT ~~BASED ON AN OR~~
21 OTHERWISE COMPLYING WITH A SUPPORTED DECISION-MAKING AGREEMENT
22 BASED ON A GOOD FAITH ASSUMPTION THAT THE SUPPORTED DECISION-MAKING
23 AGREEMENT WAS VALID WHEN MADE AND NOT REVOKED OR ABROGATED; OR

24 (2) DECLINING TO HONOR A DECISION MADE BY AN ADULT UTILIZING
25 A SUPPORTED DECISION-MAKING AGREEMENT OR FAILING TO COMPLY WITH A
26 SUPPORTED DECISION-MAKING AGREEMENT BASED ON ~~ACTUAL KNOWLEDGE~~ A
27 REASONABLE GOOD FAITH BELIEF THAT:

28 (I) THE AGREEMENT WAS INVALID, REVOKED, OR ABROGATED;
29 OR

30 (II) A SUPPORTER WAS COERCING OR UNDULY INFLUENCING
31 THE ADULT OR OTHERWISE ACTING OUTSIDE THE SCOPE OF THE AGREEMENT.

1 **(B) THIS SECTION MAY NOT BE CONSTRUED TO PROVIDE IMMUNITY FROM**
2 **ACTIONS ALLEGING THAT A THIRD PARTY HAS:**

3 **(1) CAUSED PERSONAL INJURY AS A RESULT OF A NEGLIGENT,**
4 **RECKLESS, OR INTENTIONAL ACT;**

5 **(2) FAILED TO GIVE EFFECT TO AN ADULT’S DECISION MADE IN**
6 **ACCORDANCE WITH A VALID DECISION-MAKING AGREEMENT;**

7 **(3) FAILED TO PROVIDE INFORMATION EITHER TO THE ADULT OR A**
8 **SUPPORTER OF THE ADULT THAT WOULD BE NECESSARY FOR INFORMED CONSENT;**
9 **OR**

10 **(4) OTHERWISE ACTED INCONSISTENTLY WITH APPLICABLE LAW.**

11 **Article – Health – General**

12 5–601.

13 (a) In this subtitle the following words have the meanings indicated.

14 (o) (1) “Incapable of making an informed decision” means the inability of an
15 adult patient to make an informed decision about the provision, withholding, or withdrawal
16 of a specific medical treatment or course of treatment because the patient is unable to
17 understand the nature, extent, or probable consequences of the proposed treatment or
18 course of treatment, is unable to make a rational evaluation of the burdens, risks, and
19 benefits of the treatment or course of treatment, or is unable to communicate a decision.

20 (2) For the purposes of this subtitle, a competent individual who is able to
21 communicate by means other than speech **OR WITH OTHER SUPPORT, INCLUDING**
22 **SUPPORTED DECISION MAKING IN ACCORDANCE WITH TITLE 18 OF THE ESTATES**
23 **AND TRUSTS ARTICLE**, may not be considered incapable of making an informed decision.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2022.